

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROBERT O’NEIL,

Plaintiff,

- against –

EMILY RATAJKOWSKI and  
EMRATA HOLDINGS, LLC

Defendant.

1:19-cv-09769 (AT)

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that, upon the annexed declarations of Robert O’Neil, dated October 7, 2020; Richard Liebowitz, dated October 7, 2020, and Donna Halperin, dated October 7, 2020 and the exhibits attached thereto; the annexed statement pursuant to Local Rule 56.1 of the United States District Court for the Southern District of New York of material facts as to which there is no genuine issue to be tried; the memorandum of law in support thereof; and the pleadings and prior proceedings herein, Plaintiff Robert O’Neil (“Plaintiff”) will move the Court, before the Honorable Analisa Torres (U.S.D.J.), at the Daniel Patrick Moynihan Courthouse, 500 Pearl St., New York, New York 10007-1312, Courtroom 15D, at a time and date to be determined by the Court, for an Order granting partial summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure in Plaintiff’s favor on the issue of liability for copyright infringement (Count I of the Complaint) against Defendant Emily Ratajkowski (“Defendant”) and for the dismissal as a matter of law of Defendant’s affirmative defenses to infringement liability, namely the first (failure to state a claim), second (non-infringement), third (invalidity or unenforceability of copyright), fourth (fair use); and fifth (estoppel), sixth (waiver), seventh (authorized use, license, consent, acquiescence), tenth (constitutional defenses), eleventh

(copyright misuse), twelfth (scene a faire and merger) and thirteenth (unclean hands), and for such further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Court's order, dated August 5, 2020, Defendant's opposition papers must be served by October 28, 2020; and Plaintiff's reply brief must be served by November 18, 2020.

Dated: October 7, 2020  
Valley Stream, New York

Respectfully submitted,

LIEBOWITZ LAW FIRM  
**By: /richardliebowitz/**  
Richard Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, New York 111580  
(516) 233-1660  
[RL@LiebowitzLawFirm.com](mailto:RL@LiebowitzLawFirm.com)

*Attorneys for Plaintiff*  
*Robert O'Neil*

**TO:**

Daniel Adam Schnapp  
NIXON PEABODY LLP (NYC)  
55 West 46th Street  
New York, NY 10036  
212-940-3026  
Email: [dschnapp@nixonpeabody.com](mailto:dschnapp@nixonpeabody.com)

*Attorneys for Defendant*